

DISTRICT OF COLUMBIA OFFICE OF BANKING AND FINANCIAL INSTITUTIONS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Superintendent of Banking and Financial Institutions, pursuant to Section 603(e) of the Student Loan Marketing Association Reorganization Act of 1996 (Pub. L. 104-208; 110 Stat. 3009-293) and Mayor's Order 2001-41, dated March 23, 2001, hereby gives notice of the adoption on an emergency basis of amendments to Title 26A DCMR, "Banking and Financial Institutions" to add a new chapter, "Chapter 25 Credit Enhancement Fund Grants", to establish rules for the District of Columbia Public Charter School Credit Enhancement Fund administered by the Mayor. These emergency rules are necessary to provide immediate assistance to public charter schools in the purchase, renovation and/or construction of public charter school facilities in time for the 2001-2002 school year in order to improve education in the District of Columbia. This emergency rule was adopted on March 23, 2000, and became effective on that date.

This emergency rule will expire in one hundred twenty (120) days from the effective date or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Superintendent also gives notice of her intent to take final rulemaking action to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

CHAPTER 25 CREDIT ENHANCEMENT FUND GRANTS**2500 Applicability**

2500.1 These regulations shall govern the Public Charter School Credit Enhancement Fund Grant Program administered by the Office of Banking and Financial Institutions ("OBFI").

2501 Program

2501.1 There is hereby established, within the Office of Banking and Financial Institutions, the District of Columbia Public Charter School Credit Enhancement Fund Grant Program ("Program") to provide credit enhancement to facilitate the purchase, construction and/or renovation of facilities for District of Columbia public charter schools. The credit enhancements will be administered through grants awarded to non-profit organizations to promote innovative credit enhancement initiatives for public charter schools facilities. The OBFI will fund the grants through the portion of the District of Columbia Public Charter School Credit Enhancement Fund ("Fund") administered by the Mayor.

2502 Rolling Approval Process

2502.1 Grants under the Program shall be available and awarded on a rolling, first-come, first-serve basis to the extent of available funding and appropriations. The application review process will remain open only to the extent of available funding and appropriations.

2503 Maximum Amount of Grant

2503.1 The maximum grant for each project, as defined in § 2505.1 of these regulations, under the Program shall not exceed five hundred thousand dollars (\$500,000).

2503.2 When more than one charter school is located in or benefiting from a project, the amount in § 2503.1 may be increased by an amount up to five hundred thousand dollars (\$500,000) for each additional charter school located in or benefiting from the project after the first charter school.

2503.3 The OBF1 may increase the amounts in this section if the OBF1 finds the following:

- (a) The additional amount is supported by available funding and appropriations;
- (b) The project could not be completed without the additional amount; and
- (c) The project will provide a significant benefit to public charter schools in the District of Columbia.

2504 Eligible Recipients

2504.1 A non-profit organization is eligible to receive grants under this Program if the organization is:

- (a) Engaged in the promotion of innovative credit enhancement initiatives for the development of charter school facilities; and
- (b) Authorized by two (2) or more public charter schools to act on their behalf in obtaining financing to cover the cost of an eligible project.

2505 Eligible Projects

2505.1 For purposes of these regulations, the term "project" shall be defined to mean a proposal to:

- (a) Obtain financing to acquire interests in real property (including by purchase, lease or donation), including financing to cover planning, development, and other incidental costs;
- (b) Obtain financing for construction of facilities or the renovation, repair, or alteration of existing property or facilities (including the purchase or replacement of fixtures and equipment), including financing to cover planning, development, and other incidental costs; or
- (c) Enhance the availability of loans (including mortgages) and bonds.

2505.2

In order to be eligible for a grant under the Program, a project must have prior approval for financing, or financing contingent on a Qualified Credit Enhancement that does not exceed the maximum grant amount established in § 2503 of these regulations.

2506

Qualified Credit Enhancement

2506.1

Qualified credit enhancements available to eligible recipients to enhance the availability of loans or other financing for charter school facilities may include, but are not limited to, the following:

- (a) Guaranteeing, insuring or providing security (including by pledging collateral or taking title to real property) for loans;
- (b) Providing downpayment assistance, subsidizing installment payments or otherwise directly facilitating loans;
- (c) Facilitating a secondary market for loans; and
- (d) Helping to identify potential lending sources, encouraging private lending and other similar activities to promote lending to charter schools.

2506.2

Qualified credit enhancements available to eligible recipients to enhance the availability of bond financing for charter school facilities may include, but are not limited to, the following:

- (a) Providing technical and other administrative assistance; and
- (b) Providing financial or other assistance necessary to improve the rating or proposed repayment terms of a bond issue, to induce the participation of underwriters, or to otherwise enhance the commercial feasibility of a proposed transaction (including by providing for all or a portion of installment payments on the bond in the event of borrower default or, in the case of a

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bond issue with a floating rate, a marked increase in the applicable rate, the pledging of reserves or other collateral, or by taking property or other interests).

2507 Application Procedure

2507.1 In order to be eligible for a grant under the Program, an applicant shall file an application with the OBF1 for a grant under the Program.

2507.2 The application shall consist of the following information:

- (a) A description of the grant requested from the Program, including the amount and type of credit enhancement being requested, and a description of the use of the grant proceeds;
- (b) The name of the applicant, including officers and key employees;
- (c) Certification that the applicant is authorized by two or more public charter schools to act on their behalf in obtaining financing to cover the cost of an eligible project;
- (d) The location of the project, including a description of the project's compliance with the zoning regulations of the District;
- (e) Whether the project is located in a Neighborhood Target area as established by the Office of Planning;
- (f) A description of the project (the description shall indicate whether the project constitutes the purchase, construction or renovation of school facilities, or a combination of some or all of these three (3) categories);
- (g) The type of charter school(s) to be located in the project;
- (h) The type of charter school(s) that will benefit as a result of the project;
- (i) The following information for each charter school to be located in, or that will benefit as a result of, the project:
 - (1) The curriculum;
 - (2) The age and grade level of students to be served;
 - (3) The number of students to be served; and
 - (4) Special programs or activities that will be provided by the charter school(s) to be located in, or that will benefit as a result of, the project;
- (j) A description of the financing of the project;

- (k) The name of the financial institution(s) that has approved the project's financing as required by § 2505.2 of these regulations;
- (l) A pro forma projection of the revenues and expenses of the project;
- (m) A description of the timing and phasing of the project;
- (n) An analysis demonstrating that the project cannot be financed without the requested grant; and
- (o) Any other information required by the OBFI.

2508 Application Review

- 2508.1 Not later than thirty (30) days after the receipt of an application which meets the criteria set forth in § 2507.2 of these regulations, the OBFI shall approve, in whole or in part, or disapprove, in whole or in part, the grant sought by the applicant.
- 2508.2 The OBFI will consider the following factors in determining whether to approve an application:
- (a) The number of charter schools and/or number of the students to be served by the charter school(s) located in, and/ or benefiting from, the project;
 - (b) Whether the project will benefit a high-risk population;
 - (c) Whether the project is located in a Neighborhood Target area as established by the Office of Planning;
 - (d) Whether the grant will improve public education in the District of Columbia; and
 - (e) Whether there is a reasonable probability that the project will not be achieved, or the success of the charter school(s) benefiting from the project, will not be achieved without the grant.
- 2508.3 The OBFI may approve the grant in whole or in part based on one or more of the factors listed in § 2508.2.

2509 Appeals

- 2509.1 An applicant may appeal the disapproval in whole or in part of its application to the Mayor, or his designee.

2509.2 Within thirty (30) days after receiving the appeal, the Mayor, or his designee, shall take the following action:

- (a) The Mayor, or his designee, shall reverse a disapproval of the OBFI upon a finding that the OBFI abused its discretion in disapproving the application in whole or in part; or
- (b) The Mayor, or his designee, shall affirm the decision of the OBFI upon a finding that the OBFI did not abuse its discretion in disapproving the application in whole or in part.

2509.3 The applicant shall have no further right to appeal the disapproval in whole or in part of its application upon a finding by the Mayor, or his designee, that OBFI did not abuse its discretion in disapproving the application in whole or in part.

2510 Grant Award Agreement

2510.1 Prior to, and as a condition of, a grant award, a potential recipient shall execute an agreement with OBFI that shall ensure that the grant being awarded will be used for purposes consistent these regulations and the application upon which the grant was awarded.

2510.2 The grant agreement shall include, but not be limited to, the following:

- (a) A covenant that provides for the recapture of grant funds upon a violation of the agreement;
- (b) A covenant that provides for the return of any grant funds that are no longer used for a Qualified Credit Enhancement as provided in § 2506 of these regulations approved by the Superintendent; and
- (c) Terms and conditions the Superintendent finds necessary to further the purposes of the District of Columbia Public Charter School Credit Enhancement Fund and for the benefit of public education in the District of Columbia.

2511 Reports

2511.1 A recipient of a grant under the Program shall provide a monthly report to the OBFI beginning on the first day of the first full month after the date of the award of the grant. Subsequent monthly reports shall be filed on the first day of each month thereafter until the second month after the opening of the charter school(s) located in, or benefiting from, the project. The monthly report shall contain all

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information requested by the OBFI, including but not limited to, the status of the project and the project financing.

2511.2

In addition to the report required pursuant to § 2511.1 of these regulations, a recipient of a grant under the Program shall file any other report required by the OBFI, including, any information needed by the OBFI to file its quarterly reports to the United States Congress.

All persons interested in commenting on the subject matter of this proposed rulemaking action may file comments in writing not later than thirty (30) days from the date of publication of this notice in the D.C. Register. Comments should be filed with the General Counsel, Office of Banking and Financial Institutions, 1400 L Street, NW, Suite 400, Washington, D.C., 20005. Copies of these proposed rules may be obtained from the same address.